

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 5:17-00043

EDDIE DWAIN JUSTICE, JR.

SENTENCING MEMORANDUM OF THE UNITED STATES

In accordance with this Court's order entered on April 6, 2017, the United States offers this Sentencing Memorandum outlining its position regarding the presentence report.

I. ADVISORY GUIDELINES

Neither party objects to the advisory guideline calculations set out in the Presentence Report. That is, the United States and the defendant both agree that defendant's total offense level is 30 and that he is in criminal history category I. Defendant is therefore in Zone D of the U.S.S.G. Sentencing Table with an advisory guideline range of 97 to 121 months of imprisonment.

II. 18 U.S.C. § 3553(a) FACTORS

The position of the United States is that a guideline sentence is reasonable. The factors enumerated in Title 18, United States Code, Section 3553(a) support such a sentence.

A. 18 U.S.C. § 3553(a)(1): The defendant has pled guilty to possession of child pornography, in violation of 18 U.S.C. §§

2252A(a)(5)(B) and 2252A(b)(2), and the defendant is in criminal history category I.

B. 18 U.S.C. § 3553(a)(2)(A through C): In this instance, a guideline sentence in this case will reflect the seriousness of the offense, provide adequate deterrence, and protect the public from further crime by defendant.

C. 18 U.S.C. § 3553(a)(3): Defendant faces a statutory sentence of twenty years. A guideline sentence (97 to 121 months) is reasonable and meets the statutory sentencing requirements.

D. 18 U.S.C. § 3553(a)(4)(A): The United States again argues a guideline sentence is reasonable in this case.

E. 18 U.S.C. § 3553(a)(5): The United States argues that a guideline sentence necessarily complies with the applicable guideline policy statements.

F. 18 U.S.C. § 3553(a)(6): The United States argues that a guideline sentence will avoid sentencing disparities with similarly situated defendants.

G. 18 U.S.C. § 3553(a)(7): Restitution in this case shall be ordered by the Court, pursuant to 18 U.S.C. § 2259. The United States has been in contact with representatives of victims who have made claims for restitution. PSR ¶ 50. The United States hopes to have restitution resolved by the time of sentencing, but they have not been resolved at present. In the event the claims have

not been resolved prior to sentencing, the United States requests that the Court set a date to determine victims' losses in this matter. 18 U.S.C. § 3664(d)(5). The United States is also providing victim impact statements to the Court under separate cover. Finally, an agent from the Federal Bureau of Investigation will be present at the sentencing proceeding if there should be any questions or concerns that the Court might have as to restitution, or the agency position with regard to the instant case.

III. CONCLUSION

WHEREFORE, for the above-cited reasons, the United States argues that the Court should impose a guideline sentence. The United States does not intend to call witnesses at defendant's sentencing hearing and anticipates that the hearing will last approximately 30 minutes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2017, I electronically filed the foregoing "SENTENCING MEMORANDUM OF THE UNITED STATES" with the Clerk of the Court using the CM/ECF system and service was made via CM/ECF on the following:

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